



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JULY 25, 2022

IN THE MATTER OF:

Appeal Board No. 621526

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 621525 and 621526, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed February 4, 2022, which overruled the initial determination disqualifying the claimant from receiving benefits, effective October 3, 2021, on the basis that the claimant voluntarily separated from employment without good cause; and the alternate initial determination disqualifying the claimant from receiving benefits, effective October 2, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant cannot be used toward the establishment of a claim for benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed full time as a pre-kindergarten teacher by the New York City School District; she had been employed by the district for 20 years. At the time of her separation from employment, the claimant was working in the school building providing in-person learning to her students, where she came into contact with security guards, students, their parents, paraprofessionals, other teachers, her supervisor, and the school principal.

Beginning in August and September 2021, the principal of the school where the

claimant worked told the claimant that she needed to get the COVID-19 vaccine, and that vaccination was going to be mandated. The claimant, a Christian, holds the belief that her religion does not permit her to put chemicals into her body; that the vaccines at issue were made from fetal cell lines of aborted babies, and it was against her religious beliefs to put the vaccine into her body; and that God gave her an immune system to fight what it needs to fight. Prior to October 2, 2021, the claimant applied for a COVID -19 Vaccine Religious Exemption from the employer, and her application was denied.

The claimant's last day of work was October 2, 2021. On that day, the principal told the claimant that if she did not get vaccinated, she would need to leave. The claimant emptied out her classroom, and left. Since that date, the claimant has been on a leave without pay.

On October 2, 2021, the claimant again applied for a COVID -19 Vaccine Religious Exemption; her request was denied on October 3, 2021. The denial letter provided, in part, "Per the Order of the Commissioner of health, unvaccinated employees cannot work in a Department of Education (DOE) or other site with contact with DOE students, employees, or families without posing a direct threat to health and safety."

OPINION: The credible evidence establishes that the claimant was separated from her employment on October 2, 2021 when she chose to leave her job and be placed on leave without pay, rather than comply with the New York City and employer mandate to receive the COVID-19 vaccination. This constitutes a voluntary separation from employment for unemployment insurance purposes.

The employer's requirement for the claimant to be vaccinated was pursuant to a New York City Commissioner of Health and Mental Hygiene mandate that all Department of Education (DOE) staff who work in the New York City schools be vaccinated against the COVID-19 virus. This mandate, in place to protect the health and safety of DOE staff, students, and others, was not only reasonable but necessary pursuant to the terms of the vaccine mandate in place during the pandemic.

As noted in another Appeal Board decision regarding a claimant's refusal to be vaccinated under such mandates, "The Courts have long held that New York State has the authority to regulate public health, including mandating vaccination to curb the spread of disease." Appeal Board No. 620438, citing to (see Matter of Garcia v. New York City Dept. of Health & Mental Hygiene, 31 NY3d

601 [2018], which upheld mandated annual influenza vaccinations for children attending childcare programs in New York City; *Matter of C.F. v. New York City Dept of Health & Mental Hygiene*, 191 AD3d 52 [2d Dept 2020], holding that a municipal agency had the authority to require immunizations of adults in an area where there was an outbreak of measles if authorized by law; and *Matter of New York City Mun. Labor Comm. v. City of New York*, 73 Misc.3d 621 [Sup. Ct. N.Y. Cnty. 2021], where the Court declined to grant a temporary restraining order of the implementation of the New York City Department of Education's COVID-19 vaccine mandate for its employees, noting that there was no dispute that the Department of Health and Mental Hygiene had the authority to issue the mandate and that the Court "...cannot and will not substitute [others'] judgment for that of New York City's public health experts."

The claimant's contention that she had good cause to leave her job rather than comply with the mandate because her religious beliefs did not allow her to be vaccinated, is unavailing under these circumstances. The Supreme Court of the United States has held that, "... an individual's religious beliefs [do

not] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate" (see *Employment Div. v. Smith*, 494 US 872, 879 [1990]). The Court determined that provided a law is neutral and not aimed at a specific religion, is generally applicable, and pertains to an area of law the government has the ability to regulate, it cannot be preempted by a religious practice.

The Second Circuit of the United States Court of Appeals found that the Vaccine Mandate at issue here is neutral, is generally applicable, and was a reasonable exercise of the State's power to protect the public health. *Kane v. De Blasio*, 19 F. 4th 152, 2021 U.S. App. LEXIS 35102 (2d Cir., 2021). Thus, the claimant's religious beliefs do not take precedence over the mandate.

Finally, and significantly, the United States Supreme Court has denied requests to block the vaccine mandate for New York City teachers (See *Keil v. City of New York*, No. 21A398, 595 U.S. ___, March 7, 2022; *Maniscalco, v. NYC Dept of Education*, No. 21-854, 596 U.S. ___, April 18, 2022).

Therefore, we find that the claimant's choice not to comply with the vaccine mandate was not only voluntary, as she could have preserved her employment by complying with the mandate, but was without good cause. Accordingly, we conclude that the claimant was separated from her employment under

disqualifying circumstances.

In light of our ruling that the claimant voluntarily separated from her employment, the question of whether she lost her employment through misconduct, is rendered academic.

DECISION: In Appeal Board Nos. 621525 and 621526, the decisions of the Administrative Law Judge are reversed.

In Appeal Board No. 621525, the initial determination, disqualifying the claimant from receiving benefits, effective October 3, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

In Appeal Board No. 621526, the alternate initial determination, disqualifying the claimant from receiving benefits, effective October 2, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant cannot be used toward the establishment of a claim for benefits, is rendered academic.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER